

ADVISORY COMMITTEE MINUTES

February 7, 2006

Members Present:

James Arnold
Bob Shosted
John Greenfield
Glenna Christensen
Dave Gribskov

Steve Millard
Tracy Whigham
Dave Whaley
Steve Haase
Max Sheils

Members Absent:

Rian Van Leuven
Linda Sams
Willis Norton
Senator John Andreason
Representative Kathie Garrett

Chairman Bob Shosted called the meeting to order.

Attendance

Dave Whaley reported that Willis Norton is not able to continue his duties as an Employee Representative member of the Advisory Committee due to ongoing scheduling conflicts. Mr. Norton informed Mr. Whaley that he would be submitting his resignation. Mr. Whaley will meet with the Membership and Attendance Subcommittee to find a replacement.

Minutes

Chairman Shosted called for a motion to approve the Advisory Committee Minutes of November 15, 2005. A motion was made and seconded, and the minutes were approved as written.

Subcommittee Reports

Balance Billing

(Max Sheils (Chair), John Greenfield, Dave Whaley, Steve Millard, Dave Gribskov, Steve Haase, Jack Barrett (ex-officio), Ron Hodge (ex-officio), Julie Cooper (ex-officio), and Scott McDougall (ex-officio)).

Subcommittee Chair Max Sheils reported that during the last Advisory Committee meeting Senator Andreason and Representative Garrett both agreed to sponsor the legislation proposed by the subcommittee on balance billing that amends Idaho Code §72-102 and §72-432.

Representative Garrett contacted Mr. Sheils to voice concerns the House Commerce and Human Resources Committee had regarding the definition of provider. Mr. Sheils amended the legislation by replacing "...services related to the treatment of an industrially injured patient..." to "...services related to the treatment of an injured employee..." The bill should be on this week's legislative agenda and Mr. Sheils will testify on behalf of the legislation.

Mr. Sheils also stated that the Balance Billing Subcommittee was unable to reach consensus on the need for IDAPA rules to coincide with the balance billing statute. If necessary, the subcommittee will revisit the issue.

Mr. Sheils reported that the Balance Billing Subcommittee could not reach consensus on the appropriate language to include in the form letters the Commission sends to all claimants, which would make clear to injured workers, providers are not allowed to balance bill. Therefore, the language clarifying the claimant's responsibility regarding provider billings will be left to the Commission's discretion.

Steve Millard and Dave Gribskov suggested that the subcommittee remain intact for at least the next year. Consensus was to retain the subcommittee for at least another year.

Death Benefits and Total Permanent Disability Schedules

(Jack Barrett Ex-Officio Chair, Bob Shosted, Rian Van Leuven, John Greenfield, Linda Sams, Senator John Andreason, Dave Gribskov, Kim Takagi (ex-officio))

Jack Barrett reported that proposed legislation amending Idaho Code §72-410 and §72-412 extending death benefits to dependents who attend an accredited secondary educational facility to the age of twenty-three (23) could be on the House Commerce and Human Resource Committee's agenda this week. Mr. Barrett will be present to testify on behalf of the legislation.

Mr. Barrett also stated the consensus of the subcommittee was not to pursue any extension of benefits to dependents of workers on total permanent disability.

Kids Chance

Mr. Barrett reported that he presented the Kid's Chance program to John Tait, President of the Workers' Compensation Section of the Idaho State Bar and to the State Bar Commissioners at their January meeting at which time they approved taking on the project. Mr. Barrett will discuss the program at the Idaho State Bar (ISB) Annual Workers' Compensation Conference March 10th in Sun Valley. Mr. Barrett indicated that it is very likely the Workers' Comp Section of the ISB will agree to support this program. If ISB does approve this program, ISB members will need to set up a non-profit corporation and work through the Idaho Community Foundation for managerial purposes. Mr. Barrett will update the Advisory Committee at the next meeting.

Legislative Update:

Commissioner Limbaugh reported that he was contacted by a Representative of the Fraternal Order of Police who is working on legislation with lobbyist Jeremy Piska to increase workers' compensation benefits for police from 67% of their wage to 100% reimbursement.

Commissioner Limbaugh stated he suggested that police officials visit with county and city associations to research the effect the increase in premium rates would have on cities and counties as a result of passing this legislation. The Representative did not indicate when the legislation would be proposed. Steve Haase stated that he is unaware of any insurer offering a policy with 100% wage reimbursement, and that cities and counties might end up self-insuring in order to fund that kind of program.

Commissioner Limbaugh also reported that the medical fee reimbursement rule (IDAPA 17.02.08) the Commission submitted as a proposed rule was not changed to a pending rule. Instead, the Commission adopted a new temporary rule in order to have legislative review and receive public comment. The House Commerce and Human Resources Subcommittee reviewed

the rule and after hearing testimony, held the rule time certain for two weeks to gain a better understanding of the subject. After the hearing, Representative Kemp spoke with Commissioner Limbaugh and asked what options were available to the Commission to resolve the medical fee schedule issue. Commissioner Limbaugh suggested to Representative Kemp that the legislature authorize spending authority for the Commission to hire an outside professional group to establish all the rules affecting medical reimbursement.

Representatives of the IMA and several surety representatives agreed to meet within the two-week time frame and try to reach a satisfactory resolution for both sides. Adjudication Manager Alan Conilogue attended the meeting of the IMA and surety representatives and reported that the purpose of the meeting was to establish negotiated conversion factors and analyze the effects on physician reimbursement. The IMA agreed to reduce current provider reimbursement by ten percent (10%) based on the State Insurance Fund's 2005 reimbursement data. Mr. Conilogue reported that many conversion factors and code groupings were reviewed by the group, which will be compared to the State Insurance Fund's 2005 reimbursement to providers. Once the process is complete the group will present their recommendations to the Commission.

Dave Gribskov questioned a potential issue the group had with NCCI's analysis regarding utilization. Mr. Conilogue responded that the group did mention that NCCI determined that based on studies done by the Centers for Medicare & Medicaid Services, a 40% utilization factor should be used in analyzing the effect the medical fee schedule would have on rates. Mr. Conilogue also stated that according to CMS, studies indicate that when a medical fee schedule is imposed, medical providers often modify their behavior resulting in increased utilization. Mr. Conilogue pointed out that a work group member stated that when one of the "Blues" insurers in Idaho established a medical fee reimbursement schedule, the insurer did not see an increase in utilization, which they attributed to the limited number of Idaho physicians.

Public Comment

NCCI representative Mike Taylor responded that NCCI has used CMS studies for utilization analysis in 25 to 30 states. The average utilization increase is thirty (30%) to fifty (50%) percent. NCCI determined that Idaho's utilization would increase by forty percent (40%) resulting in an increase in rates of .8% that Mr. Taylor stated is minimal. When asked if NCCI would be analyzing the new conversion factors, Mr. Taylor replied they would only do that if formally asked to do so by the Industrial Commission.

Attorney Woody Richards reported that he attended the meeting with the IMA and sureties and updated the members on the most current information. The work group is still working on the numbers and CPT code groupings to attain the ten percent reduction for provider reimbursement.

Pecuniary Gain Legislation

Commissioner Limbaugh reported that Attorney Alan Gardner voiced concern regarding the word "normally" contained in the Commission's "pecuniary gain" bill amending Idaho Code 72-204 and 72-212. Mr. Gardner is concerned that the term "normally" opens the door to controversy.

Public Comment

Mr. Barrett explained that the word "normal" was inserted after extensive legal research was done and noted that several other states use that language in their rules.

The Commission's Deputy Attorney General Blair Jaynes explained that without the term "normal", the definition of employment would be broadened.

Max Sheils added that the subcommittee attorney members worked on this rule for a long time and all agreed to this terminology in the rule.

Mr. Jaynes reported that the bill would be presented to the House Commerce and Human Resources Committee on Thursday for printing authority.

Other legislative issues were discussed.

Commissioner Kile reported that the legislature has struggled and continues to misunderstand the complexities of the workers compensation system. Commissioner Kile suggested that members of the Advisory Committee help legislators to understand the whole workers' compensation system whenever possible. Mr. Shosted concurred and suggested that the stakeholders could come together to better educate legislators on the workers' compensation program.

Commissioner Maynard agreed with educating legislators. Commissioner Maynard also encouraged members to notify the Commission if they know of any proposed bills that would negatively affect the workers' compensation system.

Public Comment

Mike Taylor added that NCCI would be willing to help with education on the workers' compensation program for legislators if needed. Mr. Barrett stated that he has been asked several times throughout the years to explain the workers' compensation system to legislative committees.

Steve Haase suggested creating a video to educate legislators on the workers' compensation system.

Mr. Millard stated that issue specific education might work better than general education of the workers' compensation program for germane committees, as legislators have so many issues to deal with. Dave Gribskov indicated that the Commission could advertise its Workers' Compensation Certification Course so legislators can self-educate if they so desire, and let legislators know what other resources are available to them.

Industrial Commission Report

Boise Office Relocation

Director Mindy Montgomery reported that the Commission is actively pursuing relocation of the Boise office. Ms. Montgomery stated that the Commission received five (5) RFP (Request for Proposal) responses and the Commission has narrowed the list to MK Plaza and Boise Cascade. The concern with the MK Plaza is that Commission employees would be split in two buildings, as MK does not have enough space in one building for us. The Boise Cascade building has recently been sold and the Commission will be meeting with the new owners. Of particular interest to the Commission is ample parking and a location close to downtown.

The Director also reported that the Commission may move the Boise Rehab office into a smaller sight west of Boise, which would alleviate the need for so many parking spaces. Also, the Boise rehab office needs easy access where clients can walk right up to the office like those of our field offices. Ms. Montgomery stated that the Commission would like to move this summer if possible.

Legislative Audit Findings

Commissioner Limbaugh reported on the audit conducted at the Commission this past summer and the one finding was the Commission's excess cash fund. The auditors recommended the Commission monitor the fund and make recommendations to the legislature for appropriate adjustments as needed. The Commissioner reported that the Governor's office contacted him wanting to know what the Commission was going to do about the excess funds. Commissioner Limbaugh indicated that if we reduce the premium tax rate, it doesn't readily reduce the fund balance. A possible twenty percent (20%) discount given back to self-insureds and sureties was considered resulting in a million dollar reduction. However, it appears the statutes don't allow us that ability and the legislative budget analysts want an Attorney General's opinion on whatever we decide to do.

Commissioner Limbaugh received a call from Senator Dean Cameron, Chairman of the Senate Finance Committee, voicing concern over what the Commission was contemplating since recent diminished funding resulted in the Commission almost running out of money. For the past three years the Commission has been functioning off its savings. Commissioner Limbaugh stated that the Commission has put off many projects over the last several years due to a lack of adequate funds, and we are now at a point that some of these projects need to be done. Senator Cameron is concerned that the Commission not do anything too soon in case the economy turns and our revenues diminish again. If legislation is needed, the Commission hopes Senator Cameron will run proper legislation, but the Senator would like to meet with the Commissioners regarding this issue.

Commissioner Limbaugh also reported that the auditor suggested the Commission propose legislation that would establish a trigger mechanism for rates based on the Commission's fund balance, but opposition from sureties continues to be a concern. Mr. Shosted suggested resurrecting the Commission Finance subcommittee to look at this issue.

Discussion was held regarding different options for maintaining a level cash fund balance and how the trigger mechanism would work. Mr. Shosted stated that the problem the insurance world would have with the trigger mechanism is receiving the rate increase in a timely manner in order to pass the increase on to their policyholders.

Bob Shosted suggested that since the Second Injury Fund's income is formula based, perhaps a reduction in the formula to fund the Second Injury Fund would be a better way to reduce the Commission's excess fund balance if the Commission is unable to give employers a discount.

Topics for Discussion at the Next Meeting:

New member – Dave Whaley
Uninsured Employer Fund – John Greenfield
Legislative Update
Presentation by a Commission Department
Kid's Chance Update – Jack Barrett

Uninsured Employers' Fund

Commissioner Limbaugh asked Mr. Barrett how most states obtain the start-up funds necessary to establish an uninsured employers fund.

Public Comment

Mr. Barrett replied that he has worked on this issue for several years and has found that most states receive a one-time contribution from the general fund for startup. From that point on, penalties collected by the Commission's Compliance Division from uninsured employers would be the ongoing source of funding, less the Commission's expense in collecting the penalties. Idaho's penalties would have to be substantially increased. Mr. Barrett stated that employers should not have to fund the uninsured employers fund nor should they have to fund safety inspections of public buildings.

Date of Next Meeting

The next meeting was scheduled for May 9.

ISB Annual Workers' Comp Seminar

Max Shiels announced that the Annual Idaho State Bar Workers' Compensation Seminar would be held in Sun Valley on Friday, March 10.

There being no further business, the meeting adjourned.